

REMARKS/ARGUMENTS

No claim amendments are made herein. Claims 1, 4-5, 7-13, 18-21, 25 and 26 are pending.

Claims 1, 4-5, 7-13, 18-21, 25 and 26 remain rejected over claims 1-12 of U.S. Patent No. 7,312,076 for alleged obviousness-type double patenting. Applicants submitted a terminal disclaimer on October 21, 2009 disclaiming the terminal portion of the term of a patent granted on the instant application over U.S. Patent No. 7,312,076. This terminal disclaimer was not approved since it was not accompanied by a Statement under 37 CFR § 3.73(b). To expedite prosecution, Applicants hereby file a Statement 3.73(b) executed by an authorized representative of the assignee. Applicants note that the filing of the terminal disclaimer to obviate a rejection based on non-statutory double patenting is not an admission of the propriety of the rejection. *See*, MPEP §804.02. Withdrawal of the rejection and acceptance of the terminal disclaimer is requested.

Claims 1, 4-5, 9, 11-13, 18-21, 25 and 26 were provisionally rejected over claims 1-3, 5-6, 8-10 of USSN 11/938044 for alleged obviousness-type double patenting. As the rejection is a provisional rejection, and USSN 11/938044 has not issued as a patent, Applicants respectfully request that the Examiner allow the application once the remaining rejections are withdrawn. Applicants submit that in view of the October 21, 2009 filed terminal disclaimer and the instant submission of the Statement 3.73(b), the provisional rejection should be withdrawn in accordance with MPEP §822.01 ("[i]f the 'provisional' double patenting rejection in one application is the only rejection remaining in that application, the examiner should then withdraw that rejection and permit the application to issue as a patent"). Withdrawal of the provisional double patenting rejection is requested.

Appl. No. 10/766,993
Amendment dated December 3, 2009
Amendment under 37 CFR 1.116 Expedited Procedure
Examining Group 1632

PATENT

CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance and an action to that end is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 415-576-0200.

Respectfully submitted,



Matthew E. Hinsch
Reg. No. 47,651

TOWNSEND and TOWNSEND and CREW LLP
Two Embarcadero Center, Eighth Floor
San Francisco, California 94111-3834
Tel: 415-576-0200
Fax: 415-576-0300
Attachments
MEH:m4m
62340502 v1